

9 FAM 41.86

CERTAIN SPOUSES AND CHILDREN OF LAWFUL PERMANENT RESIDENTS

*(CT:VISA-1282; 09-03-2009)
(Office of Origin: CA/VO/L/R)*

9 FAM 41.86 RELATED STATUTORY PROVISIONS

(CT:VISA-1282; 09-03-2009)

See INA 101(a)(15)(V) (8 U.S.C. 1101(a)(15)(V)); *INA 203 (a)(2) (8 U.S.C. 1153(a)(2))*.

INA 101(a)(15)(V)

- (15) The term "immigrant" means every alien except an alien who is within one of the following classes of nonimmigrant aliens
 - (V) Subject to section 214(q) of this title, an alien who is the beneficiary (including a child of the principal alien, if eligible to receive a visa under section 213(d) of this title) of a petition to accord a status under section 213(a)(2)(A) of this title that was filed with the Attorney General under section 214 of this title on or before December 21, 2000, if—
 - (i) Such petition has been pending for 3 years or more; or
 - (ii) Such petition has been approved, 3 years or more have elapsed since such filing date, and—
 - (I) An immigrant visa is not immediately available to the alien because of a waiting list of applicants for visas under section 214(a)(2)(A) of this title; or
 - (II) The alien's application for an immigrant visa, or the alien's application for adjustment of status under section 245 of this title, pursuant to the approval of such petition, remains pending.

INA 203(a)(2)

(2) Spouses and unmarried sons and unmarried daughters of permanent resident aliens. - Qualified immigrants -

(A) Who are the spouses or children of an alien lawfully admitted for permanent residence, or

(B) Who are the unmarried sons or unmarried daughters (but are not the children) of an alien lawfully admitted for permanent residence, shall be allocated visas in a number not to exceed 114,200, plus the number (if any) by which such worldwide level exceeds 226,000, plus any visas not required for the class specified in paragraph (1); except that not less than 77 percent of such visa numbers shall be allocated to aliens described in subparagraph (A).

9 FAM 41.86 RELATED REGULATORY PROVISIONS

(CT:VISA-989; 08-06-2008)

See 22 CFR 41.86

41.86 Certain spouses and children of lawful permanent resident aliens.

- (a) Definition of "remains pending". For the purposes of this section, a visa application "remains pending" if the applicant has applied for an immigrant visa in accordance with the definition in part 40, 40.1(l)(2) and the visa has neither been issued, nor refused for any reason under applicable law and regulation.
- (b) Entitlement to classification. A consular officer may classify an alien as a nonimmigrant under INA 101(a)(15)(V) if:
 - (1) The consular officer has received notification from the Department of State or the Department of Justice that a petition to accord status to the alien as a spouse or child pursuant to INA 203(a)(2)(A) was filed on or before December 21, 2000; or
 - (2) The alien is eligible to derive benefits pursuant to INA 203(d) as a child of an alien described in paragraph (b)(1) of this section and such alien has qualified for V classification; and
 - (3) It has been three years or more since the filing date of the petition described in paragraph (b)(1) of this section and applicable to paragraph (b)(2) of this section and either:

- (i) The petition has not been approved; or
- (ii) If it has been approved, either no immigrant visa number is immediately available or the alien's application for adjustment of status or the alien's application for a visa remains pending.

(c) Eligibility as an immigrant required. The consular officer, insofar as practicable, must determine the eligibility of an alien described in paragraph (b) of this section to receive a nonimmigrant visa under INA 101(a)(15)(V), other than an alien who previously has been granted V status in the United States by DHS, as if the alien were an applicant for an immigrant visa, except that the alien is exempt from the vaccination requirement of INA 212(a)(1), the labor certification requirement of INA 212(a)(5) and the unlawful presence ineligibility of INA 212(a)(9)(B).

(d) Place of application. Notwithstanding the requirements of 41.101, in determining the place of application for an alien seeking a visa pursuant to INA 101(a)(15)(V) the requirements of part 42, 42.61(a) and (b)(1) of this chapter will apply.

(66 FR 19393, Apr. 16, 2001)